



Public Lands Advocacy

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October 31, 2001

Mr. James L. Connaughton, Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503
Attention: Task Force

Dear Mr. Chairman:

Re: Council on Environmental Quality's (CEQ) Notice and Request for Comments on the Energy Task Force (66 FR 161, August 20, 2001).

Public Lands Advocacy (PLA) appreciates the opportunity to provide comments on the proposed nature and scope of the Energy Task Force formed to implement those activities outlined by Executive Order 13212, "Actions to Expedite Energy-Related Projects" (May 18, 2001). It is critically important to assure the American public that they will continue to receive adequate energy supplies. PLA is a non-profit organization whose members include major and independent petroleum companies, as well as non-profit trade and professional organizations that have joined together to foster the interests of the oil and gas industry relating to responsible and environmentally sound exploration and development on federal onshore lands. PLA is pleased that the Bush Administration recognizes the considerable value of ensuring a stable domestic energy supply and urges the Energy Task Force to carefully consider and implement the recommendations identified in our comments without delay in order to accomplish the goals set forth by EO 13212.

PLA's comments are organized into three categories. The first section provides recommendations for the task force's structure and its activities, and discusses why it is **imperative** for CEQ to add a functional category, "**Exploration and Production.**"

TASK FORCE STRUCTURE AND ACTIVITIES

The notice and request for comments published in the *Federal Register* (66 FR 43586-7) reiterated the Executive Order and requested information and comments on several categories of projects. The Executive Order lists a large number of agencies that will be represented on the Interagency Task Force. With such a large number of participants, and an unknown number of major energy projects, it is essential for the Task Force to be well organized and efficient. Otherwise, the Task Force could delay, rather than expedite, permitting and approval. Using the authority of the President as expressed in the Executive Order, CEQ and the Task Force should

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take immediate steps to avoid such a result in the areas of organization, resources, establishing priorities, consultation/facilitation, and measuring progress as discussed below.

ORGANIZATION

PLA recommends that each agency on the Task Force appoint a high-level representative to be responsible for coordination within that agency. PLA agrees with CEQ's intention to create a working group responsible for day-to-day operations. Moreover, the Task Force should utilize appropriate subcommittees to maximize efficiency.

The CEQ Notice specifies that the Task Force's work and staff will be organized according to eight functional categories: pipelines; refineries; electricity generation; nuclear; electricity transmission; hydropower; renewable sources; and conservation. To more effectively address the recommendations in the President's National Energy Policy, PLA urges CEQ to expand these categories to include the exploration and production sector. Exploration and production is the key initial step in providing essential energy supplies to the American public. Since any negative impact on this sector directly affects domestic energy supplies, we firmly believe these activities fall within the scope of the Energy Task Force activity. Indeed, the CEQ in its notice, has recognized, "the importance of environmentally sound production and transmission of energy to all American people."

Agency Resources

The Task Force should recognize that the serious lack of sufficient staff and contractor resources at reviewing agencies is a major obstacle to streamlining the permitting process. The Task Force needs to analyze which agencies need additional resources and make recommendations for augmenting, reallocating resources, or, in some instances, combining staff from various agencies into coordinated working groups. Additional specific recommendations for each segment area are discussed below.

Establishing Priorities

Because the CEQ Notice may lead commenters to identify a number of major energy projects, the Task Force needs to establish criteria for prioritization of projects. These priorities should be based on factors including (1) the project's ability to meet the objectives of the National Energy Policy; (2) the number of agencies whose approval will be required; and (3) timing urgency. Projects that can provide significant national benefits within the next several years and which need multiple agency approvals should be assigned the highest priorities.

Pre-application consultation/facilitation

One of the best methods for streamlining permitting processes is early coordination among project proponents and the agencies whose approval is required. It is critical for permit applicants to learn, in advance, what the agencies' concerns may be, work through them with agency staff, and address all concerns in the formal application. The Task Force can play an important role by coordinating meetings of this nature or, in some cases, requiring agencies to convene pre-application working groups consisting of project sponsors and agency staff that can facilitate communication and permitting processes.

Measuring Progress

We also recommend that the Task Force establish a tracking system that will identify for each high-priority project the agencies whose approvals are needed, central contact persons, and milestones and deadlines for making sure requests for permits or approvals do not languish within the bureaucracies. Project delays typically caused by a single agency or department must be eliminated. The tracking system should also incorporate high-level accountability. Whenever it appears that progress is not being made, the principal agency representative on the Task Force should be alerted immediately and asked to take appropriate action to ensure that permitting activities proceed expeditiously.

EXPLORATION AND PRODUCTION (E & P)

Access to Onshore Government Lands

The domestic oil and gas industry seeks to continue its historical role of significantly contributing to the economic well being and the high standard of living enjoyed in the United States. Industry continually develops state-of-the-art technologies that allow exploration, development and production activities to be pursued while minimizing environmental impacts. Despite these achievements, industry's ability to operate on government lands is often severely impeded due to unreasonable federal policies and regulatory procedures. Unabated demand for energy undeniably requires increased access to potentially energy-rich federal lands.

The National Petroleum Council (NPC), an advisory body to the Secretary of Energy, estimates that demand for clean-burning natural gas will grow by more than 30 percent by 2015. Therefore, policy-makers need to ensure that regulatory procedures related to natural gas production permitting decisions are expedited. There are several areas where decision-making processes by government officials on exploration, development and production projects could be improved or streamlined. PLA has grouped impediments to onshore oil and natural gas development into three major categories: *Inadequate Agency Resources*, *NEPA/Planning Obstacles*, and *Access Impediments through Regulation or Policy*.

• Inadequate Agency Resources

As noted above, inadequate agency resources in many federal offices and outdated resource management plans (RMPs) regularly make it difficult for operators to obtain drilling permits, seriously delaying viable projects for up to 100 days, or sometimes years. In the Rawlins, Wyoming BLM office, for example, hundreds of Applications for Permits to Drill (APDs) are awaiting action as a result of manpower shortages. Despite significant improvements in the Buffalo, Wyoming office, permits continue to be delayed due to limitations of the Buffalo RMP. This is because the "Reasonable Foreseeable Development" (RFD) figures, estimates of future development, did not adequately assess industry's interest in developing coal bed methane. Updating these RMPs and RFDs takes BLM two or more years to complete, thus often preventing or severely limiting any further oil and gas activity in that area until the plan updates are completed.

The NPC's 1999 study on natural gas points out that vast reserves of natural gas in the form of coal bed methane (CBM) lie beneath federal lands, particularly in Wyoming and Montana.

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Unfortunately, BLM's inability to grant permits in a timely manner has greatly hindered CBM development, and may contribute to further shortfalls in vital gas production.

Mineral staffs in BLM and Forest Service offices have been reduced to a level that makes it nearly impossible for agencies to meet statutory or regulatory time frames for processing permits. Our members have also seen similar staffing problems at the US Fish and Wildlife Service. It is necessary that field staff involved in exploration and development of both existing and new energy resources be increased to handle the expanded workload.

• **NEPA/Planning Obstacles**

National Environmental Policy Act. Although the National Environmental Policy Act (NEPA) contains few mechanisms to achieve its goals, the procedural mandate from Congress has had tremendous impact on public land management decisions. The CEQ, created by Title II of NEPA, promulgated regulations implementing these action-forcing procedures of NEPA that are binding on all Federal agency decisions. In our view and experience, NEPA and its regulations are fundamentally sound. However, the requirement that Federal agencies prepare an environmental impact statement (EIS) prior to major agency actions significantly affecting the environment has spawned a body of law that now governs a wide variety of predominately private activities involving any degree of Federal oversight, funding or approval. It's the agencies' implementation of NEPA that has led to unnecessary delays.

Additional problems that need to be addressed include the following:

- There is no agency accountability for the NEPA process. For example, when project proponents are paying third-party contractors for EIS work, there is no obligation or incentive on the agency's part to streamline the work, improve efficiency or otherwise keep cost to a manageable level. Rather, field office personnel often force project proponents to pay for superfluous studies, inventories, and even web sites in exchange for project approval.
- Agencies regularly fail to explore preferred mitigation efforts early in the process with other appropriate agencies and stakeholders. As a rule agencies are unwilling to dismiss frivolous public commentary and to separate ideological commentary from that focused on project-specific environmental impacts.
- Fear of litigation has forced federal government agencies to seek "litigation proof" NEPA documents, which results in excessive analyses, costs, and delays. The agencies must adhere to statutory and regulatory requirements and be willing to accept legal challenges.
- There is a tendency within both the BLM and Forest Service to slow down the process simply because a project may be controversial, rather than moving forward with an efficient "issue management" approach.
- Cooperating agencies do not always reflect an adequate understanding of the multiple-use mission of the BLM and Forest Service. Hence, they often try to force projects to comport with their own narrower agendas.
- Agencies have demonstrated a lack of understanding of CEQ regulations implementing NEPA and a lack of commitment to following CEQ guidelines.
- NEPA team leaders more often than not have little or no experience or training in managing the NEPA process or in dealing with the type of projects under review.

Moreover, there is a considerable lack of support and oversight of NEPA projects by agency managers and NEPA specialists.

- The NEPA process creates timing difficulties when understaffed agencies are asked to meet tight comment periods and time lines. Cooperative planning memoranda of understanding among lead agencies and state and local regulatory authorities would minimize difficulties and duplicative efforts while still allowing for meaningful input from all parties.
- The Environmental Protection Agency (EPA) has a habit of providing comments on draft EISs only at the comment deadline. Instead, EPA should be required to identify its concerns early in the NEPA process, as directed by NEPA and the CEQ regulations. Extraneous analyses would be eliminated if concerns were identified earlier. It is necessary for the analysis to be focused on all the key issues.
- At times lead agencies have difficulty getting other agencies with jurisdiction or relevant expertise to become "cooperating agencies." If a request to a sister agency is ignored, lead agencies are usually unwilling to enforce CEQ regulations that require all agencies with jurisdiction to participate in the process.

Planning Obstacles. Many areas with high potential for oil and gas resources have been withheld from oil and gas leasing for arbitrary reasons that have little or nothing to do with specific resource conflicts. The Rocky Mountain Division of the Lewis and Clark National Forest, several management areas on the Bridger-Teton National Forest, the Jack Morrow Hills in BLM's Green River Resource Area, and BLM wilderness reinventory units in Utah and Colorado, are specific examples of such obstacles. Difficulties in acquiring permits to drill wells on onshore federal lands and overly restrictive lease stipulations are responsible for limiting natural gas and oil production. These restrictions, such as "no surface occupancy" or seasonal stipulations, often go above and beyond what is necessary to protect the resource in question and prevent economic development of the lease without commensurate environmental benefit.

The role of special lease stipulations is frequently the major obstacle to responsible exploration and development activities. Such stipulations include protracted seasonal or other highly restrictive stipulations that impact access to 47 percent of the natural gas resources estimated to exist on BLM lands in the Rockies as reported by the National Petroleum Council (NPC). When all the restricted and off-limit BLM lands are combined they total 38.7 percent, affecting 62 percent of the natural gas resources.

The BLM and Forest Service are not the only federal land management agencies imposing such onerous restrictions. The Bureau of Indian Affairs (BIA) and the Departments of Defense and Energy (DOD and DOE) also contribute to the amount of federal multiple-use lands that are restricted to responsible oil and gas development. In total, the NPC estimates that some 137 trillion cubic feet (Tcf) of natural gas resources lying beneath Federal land in the Rockies are either off limits to exploration or heavily restricted.

As stated above in our suggestions for general task force structure, we recommend that each government agency responsible for oil and natural gas permitting work together to develop a tracking system to monitor the effectiveness of stipulations and institute a quality control process to ensure that environmental objectives are clearly stated and measurable. Monitoring would

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also identify measurable management thresholds which when reached would require a review of existing practices and a review of existing mitigation measures to determine their effectiveness. It is also necessary to review the effectiveness of plan decisions and the accuracy of the NEPA impact analyses.

Finally, there are many outdated BLM RMPs with respect to oil and gas leasing and development. RMPs establish standards and guidelines by which operators must abide, give the BLM the ability to manage the development of resources on federal land, and provide some certainty for the oil and natural gas industry to obtain permission to explore for and develop those lands. As previously stated, there are several RMPs requiring immediate action including southwest Wyoming, Rawlins, Kemmerer, and Pinedale Field Offices, western Montana and Sierra and Otero Counties, and San Juan Basin in New Mexico. PLA urges BLM to identify development of natural gas and oil resources as a priority in land management and planning policies and immediately initiate the plan amendment process to bring outdated plans current.

♦ Access Impediments through Regulation or Policy

Stipulations are not the only impediments to bringing domestic oil and natural gas to America's consumers. In addition to the NPC's estimates of lands being off limits, a recent DOE study concluded that more than 11 Tcf of natural gas was summarily placed off limits late last year by the US Forest Service's "Roadless" rule. This rule would set aside in a de facto wilderness classification over 58 million acres, thereby making 50% of Forest System areas unavailable for oil and gas activities. These lands would be unavailable, despite the fact that energy development activities are temporary in nature, completely paid for by industry, and are subject to reclamation requirements once a project is completed or no commercial quantities of oil or gas are found. The DOE has estimated that more than 80 percent of the natural gas resources believed to be on Forest Service land are limited to only 1.5 million acres out of the 58.5 million acres covered by the rule. PLA recommends that the program be reevaluated so that access to the bulk of the resources can be provided while still preserving a very significant portion of the acreage for other purposes. Alternatively, oil and gas development activities should be exempted.

CONCLUSION

Government decision-makers need to address these problems without delay and implement a fair and effective national energy policy. We cannot list all the specific problems here but would be happy to provide more specific information as the CEQ proceeds further in developing the agenda of the interagency task force. PLA welcomes this opportunity to share with the new CEQ task force the issues of concern that affect energy-related projects.

A key point that needs to be recognized by CEQ and the Energy Task Force is that many companies are reluctant to provide site-specific data in response the *Federal Register* request for fear of retribution from federal agencies. While it may be difficult for CEQ to accept this concern as valid, it should be noted that reprisals have occurred in the past on several occasions when companies testified before Congress or when they have contacted high level officials with respect to localized, site-specific problems. Therefore, in order to facilitate CEQ's

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effort, PLA urges CEQ to come out to the Rockies as soon as possible to meet individually with company representatives who are willing to discuss in person their experiences rather than putting them in official comment letters. PLA offers its services in arranging such meetings.

Select examples of problems experienced by operators on government lands are identified in the attached document. These examples should in no way be considered all-inclusive, but they are intended to acquaint CEQ with the types of problems that are prevalent for those companies who wish to conduct exploration and development activities on federal lands.

In order for adjustments to be made with minimal disruption, it is vital for the Administration to begin making critical policy decisions immediately. To that end, it is also essential for those agencies that fall within the realm of problems outlined above to be fully represented at the Energy Task Force table with individuals at appropriate decision-making levels so that impacts on energy availability and requisite decisions are thoroughly considered and wisely implemented.

PLA appreciates this opportunity to provide you with our comments on this critically important issue. In addition to these comments, we support the comments submitted to CEQ by our members, including the American Petroleum Institute, Petroleum Association of Wyoming and the Independent Petroleum Association of Mountain States. We look forward to meeting with you in the near future and urge you to utilize PLA as needed to accomplish your goals.

Sincerely,

Claire Moseley

Claire M. Moseley

Attachment

Cc: The Honorable Gale Norton
The Honorable Ann Veneman
Nina Rose Hatfield, Acting BLM Director
Dale Bosworth, Forest Service Chief

Examples of Permitting Delays

- PROJECT:** Willow Bend Vibroseis 3D Seismic Survey
Company: PGS Onshore, Inc.
Agency: BLM, State Historic Preservation Office, Wyoming Oil and Gas Commission
Description: Notice of Intent filed with BLM on July 23, 2001. Survey effort and archaeological inventory from July 25, 2001 through September 27, 2001 when the archaeological report was furnished to BLM office. Crew waited until October 13, 2001 before NOI was approved and acquisition could begin. BLM delayed permission to deploy receivers until the end of the day, October 10, 2001.
Delay: 67 days from NOI until archaeological report is finished for the crew to practice avoidance.
Solution: Inventory along lines where vehicles will drive could be completed and reviewed by BLM. Archaeological site recording and report could be completed while crew is working, which could easily reduce the delay by 50%.
Delay: 16 days between the time the archaeological report was submitted to BLM and data acquisition could begin. Crew was not given permission for "casual use" to deploy receivers for 14 days.
Solution: "Casual Use" for no vehicle receiver deployment should be automatic. Better staffing and/or turnaround time for archaeological report approval.
- PROJECT:** Patrick Draw Vibroseis 3D Seismic Survey
Company: PGS Onshore, Inc.
Agency: BLM, State Historic Preservation Office, Wyoming Oil and Gas Commission
Description: Notice of Intent filed with BLM on June 8, 2001. Survey effort and archaeological inventory for phase one from June 13, 2001 through August 21, 2001 when the archaeological report was furnished to BLM office. Crew waited until August 31, 2001 before NOI was approved and acquisition could begin.
Delay: 70 days from NOI until archaeological report is finished for the crew to practice avoidance.
Solution: Inventory along lines where vehicles will drive could be completed and reviewed by BLM. Archaeological site recording and report could be completed while crew is working, which could easily reduce the delay by 50%.
Delay: 10 days between the time the archaeological report was submitted to BLM and data acquisition could begin.
Solution: Better staffing and turnaround on archaeological report approval.
- PROJECT:** Horse Trap Vibroseis 3D Seismic Survey
Company: PGS Onshore, Inc.
Agency: BLM, State Historic Preservation Office, Wyoming Oil and Gas Commission
Description: Notice of Intent filed with BLM on April 24, 2001. Survey Effort and archaeological inventory from May 6, 2001 through July 18, 2001 when the archaeological report was furnished to BLM office. Crew waited until August 6, 2001 before NOI was approved and acquisition could begin. BLM delayed permission to deploy receivers until August 3, 2001.
Delay: 86 days from NOI until archaeological report is finished for the crew to practice avoidance.
Solution: Inventory along lines where vehicles will drive could be completed and reviewed by BLM. Archaeological site recording and report could be completed while crew is working, which could easily reduce the delay by 50%.
Delay: 20 days between the time the archaeological report was submitted to BLM and data acquisition could begin. Crew was not given permission for "casual use" to deploy receivers for 17 days.

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Solution: "Casual Use" for no vehicle receiver deployment should be automatic. Better staffing and/or turnaround time for archaeological report approval.

PROJECT: Duncan-Van Schaick #1-3, Moffat County, CO

Company: Texaco

Agency: BLM Field Office - Craig

Description: Application for a Permit to Drill (APD)

Delay: APD delayed due to staffing issues and one individual Craig BLM Field Office who opposed the well because of sensitive soils. The APD for this well was submitted in time to drill in December 2000, but because of the delay in getting approval, it was not drilled until August 2001. An 8-month processing time for a single APD is considered unreasonable, yet there is little visible effort by this BLM office to shorten processing time. In the end, the permit had conditions to construct the access road to specifications far exceeding any other oilfield road, which added \$70,000 to the cost of this project.

9/18/00 Staked well

10/10/00 Submitted Notice of Staking to BLM

10/25/00 Conducted on-site inspection with BLM. The inspector from the Craig Office was not available. He was working on grazing permits, and was told by his manager that a person from the Meeker Office could fill in. The on-site went well, and no major difficulties were found or discussed.

11/??/00 Texaco met with BLM personal to discuss future drilling plans where it was revealed that BLM was concerned about sensitive soils on the well pad and access road. Texaco agreed to address any concerns and complete an engineered road plan. Texaco also asked BLM about getting a drilling permit before the Raptor nesting season begins in February. They said they would do the best that they could do considering their lack of personal.

2/1/01 APD not approved. We were told it is being held up by the sensitive soils issue and now raptor nesting. Texaco agreed to hire a consultant to conduct a raptor nest inventory. This was completed in April and concluded that there were no nesting raptors in the area. BLM biologist was satisfied and signed off on the EA.

5/??/01 BLM scheduled another onsite inspection. At this meeting the sensitive soils issue was discussed and BLM admitted that they did not have a reason to not approve the APD.

6/28/01 BLM approved APD with conditions that Texaco hire an engineering firm to over-see the pad and road construction. The conditions required certain compaction requirements. Before the conditions of approval, the road and pad would cost approximately \$50,000. The actual cost was over \$120,000.

PROJECT: Several in Utah and Wyoming Geophysical Surveys

Company: Veritas

Agency: Utah and Wyoming BLM Field Offices, Wyoming State Historic Preservation Office

Delay: Required to file a Notice of Intent (NOI) before being provided any type of Wildlife or Special Requirement information from BLM.

Solution: Provide wildlife or special requirements in advance to allow operator to decide on appropriate mitigation measures for inclusion in the NOI and whether to move forward with the project.

Delay: The rules require BLM to respond to a NOI within 5 days of receipt. However, BLM has taken more than 60 days to provide a response. A map of the proposed project area was provided to BLM in

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- Utah to have the wildlife concerns noted on it and after 60 days it was returned to the company with no information.
- Two NOI's submitted to BLM in Wyoming were held up 61 days before being provided a written response -- the response was finally provided only after several phones calls were made to the BLM field office.
- Delay:** Notification was received from Wyoming BLM that due to the workload associated with increased oil and gas drilling and geophysical activity, Veritas would have to prepare the required environmental document (EA), conduct the cultural inventory, and arrange for threatened and endangered (T&E) species clearances. Companies are being forced to pay a third party contractor to do project Environmental Assessments to facilitate any kind of timeline -- this has never been required or requested in the past. This adds to the cost of the project.
- Solution:** Increase staff to handle the increased workload and work with project proponents to streamline the permitting process.
- Delay:** On a recent project where we have been told we will have to do the EA, we were also informed that the State Historic Preservation Office SHPO would not issue an exception on having to perform an archeological survey over frozen, snow-covered ground this winter. This was only verbally told to us and we were not given any reason for this change in procedure.
- Solution:** BLM is the decision-maker on oil and gas operations on public lands and should evaluate SHPO's advice to determine if it is reasonable. If such advice is a departure from established procedure, BLM should over-ride the SHPO.

Examples of Leasing Delays

- PROJECT:** BLM Leasing in Sweetgrass County, MT
- Company:** Ballard Petroleum.
- Agency:** Montana BLM
- Delay:** On 11/9/99 Ballard Petroleum nominated lease parcels in Sections 30&31-T1S-R17E, Sec. 1-T2S-R16E and Sec. 12-T2S-R16E, Sweetgrass County, Montana. Via a letter dated 11/12/99, BLM promptly acknowledging the request to have these lands put up for competitive leasing. BLM indicated that "the lands have been previously nominated but are unavailable for leasing at this time because a cultural inventory is required prior to leasing". After waiting two years for the "cultural inventory" to be completed, we received another letter on 9/20/01 from BLM. BLM noted that in our request of 11-9-99 certain leases had cultural resource values, followed by the statement, "A recent report from our field office recommended intensive inventory survey to determine if the lands may be leased with appropriate lease stipulations. These lands will be suspended until the completion of the cultural inventory. A completion date is not available at this time."
- Delay:** There are several 40-acre Federal lots inside two different 640-acre fee spacing units. By Montana permitting statute, 640-acre drilling units are required to drill gas wells in this state. We currently have an open 40-acre tract, inside our drilling unit, for which BLM is requiring a cultural survey. However, the agency cannot tell us when they might get around to it!
- Solution:** BLM must be provided with adequate personnel to complete the necessary cultural inventory so that leasing may resume in a timely fashion.
- Delay:** BLM requires operators to perform archeological surveys on private surface under which the Federal government owns the mineral estate. Operators are often delayed in drilling on fee lands due to concerns that only apply to Federal surface.

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Solution: The permitting process on innumerable drilling locations and seismic surveys could be streamlined if the BLM eliminated the requirement that operators perform archeological surveys on private surface/federal minerals where private land owners do not want the survey done. A simple waiver by the fee surface owner could be used to eliminate the need for an archeology survey since the BLM has no jurisdiction over private lands.

NEPA/Planning Delays

PROJECT: Rim Rock #22-12, Lincoln County, WY
Company: Texaco
Description: Application for a Permit to Drill (APD) delayed by National Trails Concerns
Agency: BLM Kemmerer Field Office
Delay: An APD was filed on May 1, 2001. It is now almost 5 months later and the APD has still not been approved, which makes the likelihood of the APD being approved in time to drill the well before the November 15 big game wintering restrictions come into effect is slim.

3/20/01 Notice of Staking submitted to BLM-Kemmerer, WY office to stake the Rim Rock #22-13 well.
3/26/01 Application for Permit to Drill was submitted to the Wyoming Oil and Gas Conservation Commission (WOGCC).
4/3/01 On-site field inspection with BLM-Kemmerer Field Office representatives. During the field staking, the BLM representative requested we move the location so as to be more than ¼ mile away from the Slate Creek Cutoff trail. The access road to the location was also redesigned so as to minimize the visual impact from the trail. Since it was noted that there was evidence of prairie dogs in the area, the BLM requested we conduct a Black-footed ferret survey. Texaco agreed to comply with all these requests.
5/1/01 Amended APD submitted to the BLM-Kemmerer, WY office to account for the location change made during the on-site inspection. This led to a request for a location exemption as the well site was too close to the lease line per State of Wyoming Spacing rules. The exception was agreed to by the WOGCC on 6/15/01.
5/10/01 The archaeological survey was completed and submitted to the BLM. Cultural resource clearance was recommended for this project from the third-party archaeologist.
6/5/01: The access road plan was approved by the BLM.
7/10/01: Telephone conversation with Field Manager (FM) of the BLM-Kemmerer Field Office regarding the status of the APD's who indicated the delay in the permits is due to:
1. Recent 'things' dictating their actions to issuing permits near historic trails,
2. A viewshed analysis is going on right now. FM did not know if they were looking 3 or 5 miles on each side of the trail,
3. Most actions to date have dealt with withholding lease sales until they have guidelines, however they are now affecting permits,
4. They are not clear on how to deal with APD's; therefore, they decided to open up the issue to other interested parties (beyond the NEPA process). A letter was sent to the National Park Service (NPS) and the Oregon-California Trail Association (OCTA) for their comments. Finally, they are looking to meet with all interested parties to see if they can work things out.
7/24/01 Telephone conversation with FM to inquire of the progress of their work. FM said:
1. The BLM State Office has not yet decided how to deal with trails, but to expect an interim memo this week with guidance how to proceed with permitting until the viewshed analysis is completed and that stipulations will be placed on new leases near only Congressionally Designated Trails.
2. There was another Field Office meeting scheduled for July 27 to discuss this issue and,
♦ There is a meeting planned again with the State Office on 8/15/01.

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- ♦ A response was received from both the NPS and OCTA indicating their opposition to the drilling of these wells.

8/1/01 Company representatives met with Field Office staff and representatives from the NPS, OCTA and the Lincoln County Historical Society. A field visit to the well locations was included since those who wrote the objection letters objecting had not visited the site before.

Following the field visits, the FM asked to meet in his office. He agreed that there should be no delay in approving the APD for the Rim Rock #11-13 well as that well could not reasonably impact the viewshed from the small trail segment over 2000 feet, and across the highway from the well site. There would be a delay in approval, however, as they have to gain concurrence from the Wyoming SHPO which has 15 days to respond.

The FM asked at that time for some mitigation measure for the Rim Rock #22-13 well from Texaco. Our response was that we met all of the conditions for this well according to the Resource Management Plan and complied with all the requests made by the BLM during the staking. We were at a loss as to what type of trail mitigation would be appropriate as the site was over ¼ mile away, production facilities would not break the horizon, and there were multiple signs of development already within view (well sites, Exxon Shute Creek Plant and Highway 372).

It was unclear what type of mitigation the BLM was asking for. An idea to bury the production tanks was suggested by the NPS. This idea was rejected due to the added regulations regarding underground storage tanks. Another idea to directionally drill this well from a surface location further away from the trail was rejected because the well economics could not bear the added costs. Another idea to install "low-profile" equipment was deemed unreasonable since the facilities viewed from the trail would not break the horizon. Another option to locate the production facilities out of view from the well site was examined but this proved to be impractical.

Since Texaco had met all the conditions imposed on this well by the RMP and no logical mitigation to lessen any perceived impacts to the trail were offered, the FM stated he would attempt to get clear guidance from the State BLM office on how to proceed.

8/6-8/01A Black-footed ferret survey was conducted which concluded there were none in the area.

8/21/01 Phone message from FM stated BLM had received the modified archaeological report for this well and had submitted their opinion of "no adverse impact" to SHPO for their review and requested an expedited review.

9/13/01 Telephone conversation with FM indicated SHPO concluded the BLM's review does not contain sufficient information to agree with their assessment of "no adverse affect" and requested additional information to conduct their review. In a meeting with his staff and a teleconference with SHPO, BLM decided to go ahead and get panoramic photographs from the trail, noting all the development visible from the trail. SHPO also stated that it would not be able to conduct its review of the new data until 9/24/01 due to other commitments.

PROJECT: Bennett Ranch Federal Exploratory Unit
Company: Various Oil & Gas Companies; Burlington Resources Oil & Gas Company, LP (BR) is 50% interest owner in various projects proposed by Harvey E. Yates Company (HEYCO) in this area.
Description: Oil and gas exploration and production
Agency: Bureau of Land Management, Las Cruces Field Office, New Mexico

Delay: Potential habitat and a few sitings of the Aplomado Falcon, a T&E (threatened and endangered) species under the ESA (Endangered Species Act) in addition to the lack of sufficient oil and gas support in the existing RMP in response to the increased activity in the Resource Management area precipitated the need for an RMP Amendment.

The current planning and environmental documents under which the Las Cruces BLM operates are the *Environmental Assessment: Oil and Gas and Geothermal Leasing in the White Sands Resource Area, 1981* and the *White Sands Resource Area Management Plan, 1986*. BLM's NOI (notice of intent) to amend the RMP, prepare an EIS, and conduct public scoping meetings was published in the Federal Register on October 15, 1998. All leasing was deferred until completion of the RMPA/EIS. HEYCO, along with BR, formed a federal exploratory unit in Otero County in 1996. An initial exploratory well was completed as a producer on August 3, 1997. HEYCO, BR, and other operators subsequently nominated additional federal lands for leasing and BLM declined to offer those lands for public sale.

In 1998 BLM approved several confirmation wells (APDs) with the condition that they could not be produced. The draft October 2000 RMPA/EIS contained onerous, restrictive stipulations pertaining to future development that are currently being contested by industry. Leasing in these counties has been shut down for at least 3 years, while Hudspeth County, Texas (due south) has been actively leased with much drilling activity due to high resource potential. The final RMP is due to come out in December 2001 with no indication that industry concerns were taken into consideration.

Solution: To ensure that environmentally compatible exploration activity will be allowed to continue in Otero County, there should be:

- full consideration of the potential impacts of each alternative analyzed in the RMPA on the recovery of energy resources;
- prompt finalization of the RMPA, with associated implementation of energy supply initiatives as identified by the Administration;
- prompt implementation of any APD or other permitting process improvements identified as part of the ongoing nationwide BLM permitting benchmarking project;
- no restrictions or stipulations adopted in the RMPA that exceed reasonable protection that would prevent economic development without commensurate environmental benefit; and,
- a post-plan monitoring program instituted to determine the effectiveness and necessity of the stipulations and the overall management objectives of the RMPA.